

Jeff A. Fox, MD

5/1/2018

1 (1)

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OKLAHOMA

3 MARILYN PHILLIPS,

4 Plaintiff,

5 vs No. 17-CV-547-JHP-JFJ

6 FARMERS INSURANCE COMPANY,
7 INC.,

8 Defendant.

9 VIDEOTAPED DEPOSITION OF JEFF FOX, M.D.

10 Taken on Behalf of the Plaintiff
11 On May 1, 2018, beginning at 3:15 p.m.
12 In Tulsa, Oklahoma

13 APPEARANCES

14 Appear on behalf of the PLAINTIFF:

15 Anthony M. Laizure
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18 Tulsa, Oklahoma 74119
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21 Appear on behalf of the DEFENDANT:

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28 VIDEOTAPED BY: STESHA SNOW
29 REPORTED BY: MARY K. BECKHAM, CSR, RPR

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PLAINTIFF'S
EXHIBIT

3

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<p>1 Q Well --</p> <p>2 A You're asking me to interpret this. I'm</p> <p>3 asking, it's your record. I don't understand the</p> <p>4 difference.</p> <p>5 Q Well, it's not my record, it's the</p> <p>6 investigating officer's, but what he checked off was</p> <p>7 no injury for injury severity, and then type, he</p> <p>8 says the type is not applicable because there was</p> <p>9 apparently no injury. Let me just ask you this,</p> <p>10 Doctor, are those findings consistent with the</p> <p>11 history you got from the patient that there was</p> <p>12 immediate pain?</p> <p>13 A I don't know. I don't know how to</p> <p>14 interpret this information.</p> <p>15 Q Okay.</p> <p>16 A It's not my level of expertise.</p> <p>17 (Exhibit 2 marked for identification.)</p> <p>18 Q (BY MR. TAYLOR) All right. Let's go over</p> <p>19 to Exhibit Number 2. I'll tell you that these are</p> <p>20 records from Med Center, I think that's also</p> <p>21 referred to as urgent care, on the date of this</p> <p>22 accident August 27, 2012.</p> <p>23 A Yes.</p> <p>24 Q As far as the history given to the people</p> <p>25 there at the Med Center, would you agree that it</p>	<p>1 Q All right. And then on the day of the</p> <p>2 accident, the second diagnosis was cervical/thoracic</p> <p>3 strain, and then the third diagnosis, elevated blood</p> <p>4 pressure?</p> <p>5 A Yes.</p> <p>6 Q Is that how you would interpret that?</p> <p>7 A Yes.</p> <p>8 Q All right. There is no diagnosis in</p> <p>9 regard to each shoulder; is there?</p> <p>10 A Well, the biceps strain is a shoulder</p> <p>11 diagnosis if they're referring to her proximal</p> <p>12 shoulder.</p> <p>13 Q All right. Is that record inconsistent</p> <p>14 with the history you got from the patient that she</p> <p>15 had immediate pain in the shoulders?</p> <p>16 A Well, I guess the ambiguity is this biceps</p> <p>17 pain. You know, biceps pain here (indicating) is in</p> <p>18 the shoulder, so if that was the pain they were</p> <p>19 referring to then that would be consistent. If it</p> <p>20 was biceps pain here (indicating), that would be</p> <p>21 inconsistent.</p> <p>22 Q Okay. But you're saying high up, if the</p> <p>23 pain was up in the shoulder it could be consistent?</p> <p>24 A Biceps is right here (indicating), yes.</p> <p>25 Q All right. Is the bicep not a little bit</p>
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<p>1 says that they wrote on that date that she was --</p> <p>2 she said she was a restrained driver stopped at a</p> <p>3 red light, saw accident coming, double hit to rear,</p> <p>4 no airbag deployed, head to back of headrest, sore</p> <p>5 to B biceps, and I'm assuming B means bilateral?</p> <p>6 A I would assume.</p> <p>7 Q That means both biceps; right?</p> <p>8 A Yes.</p> <p>9 Q X-rays were taken of the cervical spine.</p> <p>10 Where it says C spine, that's cervical; isn't it?</p> <p>11 A C spine is cervical, yes.</p> <p>12 Q There were no x-rays of the shoulders that</p> <p>13 day; were there?</p> <p>14 A Hang on. I've got to find -- correct.</p> <p>15 Q Then under the diagnosis, the finding was</p> <p>16 bilateral biceps strain. What type of injury is</p> <p>17 that?</p> <p>18 A Well, they're not specific. The biceps</p> <p>19 starts here and it ends here, so in the shoulder it</p> <p>20 would be in this region here (indicating).</p> <p>21 Q You did not find a tear of biceps tendon,</p> <p>22 though; did you?</p> <p>23 A No.</p> <p>24 Q Is that true in both shoulders?</p> <p>25 A Correct. There was not.</p>	<p>1 lower than that?</p> <p>2 A Well, the biceps starts dead center in the</p> <p>3 shoulder attached to the superior labrum and comes</p> <p>4 out of that labrum and comes down the front of the</p> <p>5 shoulder and forms the biceps muscle.</p> <p>6 (Exhibit 3 marked for identification.)</p> <p>7 Q (BY MR. TAYLOR) All right. Let me refer</p> <p>8 you to Exhibit 3. I tell you this is a recorded</p> <p>9 statement of Marilyn Phillips and it appears like</p> <p>10 the date of interview was September 5, 2012.</p> <p>11 MR. LAIZURE: Well, let me just interpose</p> <p>12 an objection to the use of this document in this</p> <p>13 deposition because it's not been authenticated or</p> <p>14 verified. We have no idea whether this is accurate</p> <p>15 and contains the entire statement given by</p> <p>16 Ms. Phillips, but I've made my record.</p> <p>17 You may proceed, Mr. Taylor.</p> <p>18 MR. TAYLOR: Thank you.</p> <p>19 Q (BY MR. TAYLOR) Doctor, on the second page</p> <p>20 of this recorded statement right at the top, a</p> <p>21 question was asked Ms. Phillips, and, again, this is</p> <p>22 on September 5, 2012, which I believe that would be</p> <p>23 a little over a week after the accident. Question,</p> <p>24 what type of injuries did you sustain; her answer,</p> <p>25 my arms and my neck and my head and I just felt</p>

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1 very, very, yeah, bad. Would you agree that
 2 there's -- she's not saying she had pain in her
 3 shoulders, would you agree with that?
 4 A She did not say shoulders.
 5 Q If an acute injury causes a torn rotator
 6 cuff, how does that affect the range of motion of
 7 the arm?
 8 A It would be diminished typically.
 9 Q Of course, you conducted the range of
 10 motion test?
 11 A Yes.
 12 Q Did you find diminishment of the range of
 13 motion?
 14 A Two years later my exam -- you're asking
 15 about acutely, now you're asking about my exam two
 16 years later?
 17 Q Yes.
 18 A What's your question about that?
 19 Q Well, I asked if an acute injury causes a
 20 tear of the rotator cuff would it diminish the range
 21 of motion? And then my follow-up --
 22 A At that time, certainly.
 23 Q Okay.
 24 A You would expect that to.
 25 Q And then does that change over time

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1 without surgery?
 2 A It can.
 3 Q Can the rotator cuff heal without surgery?
 4 A It doesn't heal.
 5 Q What would cause --
 6 A But the motion came improve.
 7 Q What causes it to improve without surgery?
 8 A The other muscles compensate. As we
 9 talked about your study, you have asymptomatic
 10 patients with normal range of motion who have a torn
 11 rotator cuff; right?
 12 Q Yes. Did you see any record anywhere that
 13 indicated that she at any time had a diminished
 14 range of motion?
 15 A I didn't see any record of range of
 16 motion.
 17 Q In the case of an acute tear of the
 18 rotator cuff are there any symptoms other than pain,
 19 such as a snapping or loss of muscle power, what
 20 symptoms would you expect to find?
 21 A In an acute tear you certainly could find
 22 snapping. You could have decreased strength, I
 23 assume you're talking about loss of power. You can
 24 have crepitus noise in the shoulder, you can have
 25 pain at night. It's pretty limitless. I can keep

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1 on going for quite a while.
 2 Q Based on your findings during both
 3 surgeries she had at least a couple of different
 4 tears; correct?
 5 A Two tendons, the infraspinatus and
 6 supraspinatus that both attach at the top had tears
 7 in them.
 8 Q All right. Considering her age, just
 9 based on what you saw in surgery did it look to you
 10 like this was the result of an acute injury or more
 11 of an attritional change?
 12 A One couldn't tell. The surgery, I
 13 believe, was two years after the injury; is that
 14 accurate?
 15 Q Yes.
 16 A So it's not an acute surgical case. Now,
 17 if I'd looked at that a week after the surg- --
 18 after the injury I could answer that question. But
 19 two years later, I can't tell.
 20 Q Can you tell by MRI?
 21 A You can tell -- sure, if an MRI was done
 22 immediately after, then that could demonstrate
 23 acuity.
 24 Q In this case you ordered the MRIs; is that
 25 correct?

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1 A I believe so.
 2 Q And those were -- there was one on each
 3 shoulder, they were both in 2014.
 4 A Yes.
 5 Q So based on what I'm hearing from you, it
 6 sounds like you cannot tell from what you see on the
 7 films whether it is the result of an acute injury
 8 versus an attritional problem.
 9 A I could not age this as far as saying was
 10 the rotator cuff torn on that date or was it already
 11 torn the day before her accident, no.
 12 Q You've seen patients in this age range of
 13 Ms. Phillips who have had rotator cuff tears, and in
 14 your opinion exist -- had them maybe for years
 15 without symptoms?
 16 A Yes.
 17 Q And then at some point in time there's an
 18 MRI that shows the evidence of a tear and you
 19 operate; does that happen?
 20 A Well, there would be symptoms that led to
 21 that MRI and then symptoms would lead to one having
 22 a surgery.
 23 Q As I understand your records, I think you
 24 told us that you discharged her on April 30, 2015 --
 25 or maybe the term is you released her from your

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